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 THE INCOME TAX SCHOOL, INC.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

LOPEZ TAX SERVICE, INC., a California  
 corporation, CARLOS C. LOPEZ, an  
 individual, KRISTEENA S. LOPEZ, an  
 individual, and LATINO TAX  
 PROFESSIONALS ASSOCIATION, LLC,  
 a California limited liability company,

Plaintiffs,

vs.

THE INCOME TAX SCHOOL, INC., a  
 Virginia corporation,

Defendant.

) Case No. CV12-0654-JSW  
 ) Consolidated with Case No. CV12-04181-JSW

) Hon. Jeffrey S. White

) **JOINT CASE MANAGEMENT**  
 ) **STATEMENT AND [PROPOSED]**  
 ) **ORDER**

) Date: October 26, 2012

) Time: 9:00 a.m.

) Ctrm: 11, 19<sup>th</sup> Floor

1 The parties to this consolidated action jointly submit this JOINT CASE MANAGEMENT  
2 STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the  
3 Northern District of California dated July 1, 2011 and Civil Local Rule 16-9.

#### 4 **1. JURISDICTION & SERVICE**

5 Plaintiffs Lopez Tax Service, Inc. (“LTS”), Carlos C. Lopez (“Carlos Lopez”), Kristeena S.  
6 Lopez (“Kristeena Lopez”) and Latino Tax Professionals Association, LLC (“LTPA”) (collectively,  
7 “Plaintiffs”) bring Case No. CV12-02654-JSW (“*Lopez* suit”) against Defendant The Income Tax  
8 School, Inc. (“ITS”). Case No. CV12-04181-JSW (the “*ITS* suit”) is consolidated with the *Lopez*  
9 suit. The *Lopez* suit is the lead case [Docket No. 28].

10 The *ITS* suit against LTPA alleges copyright infringement and violations of the Digital  
11 Millennium Copyright Act. The ITS suit was originally filed in the Eastern District of Virginia and  
12 made the same allegations against LTS, Carlos Lopez and Kristeena Lopez, but those claims were  
13 dismissed for lack of jurisdiction and insufficient service. Having found a lack of personal  
14 jurisdiction against three of the four defendants, the Eastern District of Virginia court then  
15 transferred to this district. The *Lopez* suit seeks declaratory relief pursuant to 28 U.S.C. § 2201 for a  
16 determination that no plaintiff has infringed any copyright of ITS and has not violated the Digital  
17 Millennium Copyright Act.

18 This Court has jurisdiction over this consolidated action pursuant to 28 U.S.C. § 1332(a) in  
19 that there is complete diversity between the plaintiffs and the defendant. Plaintiffs are citizens of  
20 California. ITS is a citizen of Virginia. The amount in controversy exceeds the sum of \$75,000  
21 exclusive of interest and costs in addition to the declaratory relief sought in the *Lopez* suit. There is  
22 federal question jurisdiction pursuant to 28 U.S.C. § 1331 because the claims arise under the  
23 Copyright Act (17 U.S.C. § 501 et seq.) and the Digital Millennium Copyright Act (17 U.S.C. §  
24 1202).

25 ITS was served in the *Lopez* suit on May 23, 2012 and initially ITS moved to dismiss it.  
26 But by Stipulated Order on October 3, 2012 [Docket No. 28] the motion was denied. ITS has  
27 agreed to file its answer to the *Lopez* suit Complaint and a counterclaim by October 17, 2012. The  
28

1 Plaintiffs herein who are named as counter-defendants will timely respond to ITS' counterclaim.  
2 LTPA will answer the *ITS* suit complaint by October 17, 2012.

## 3 **2. FACTS**

4 ITS contends that it is the author or assignee of compilations of certain government  
5 publications concerning income tax return forms and their proper preparation and that Plaintiffs  
6 have created, distributed and used copies of ITS' documents or derivative works in Plaintiffs'  
7 alleged business of providing continuing education to income tax return preparation  
8 professionals, thereby damaging ITS.

9 Plaintiffs contend that ITS' allegedly copyrighted documents are instructions for tax  
10 preparers to use while completing specific federal or state income tax forms, but the allegedly-  
11 infringing materials to which ITS' complaint refers are educational materials designed to prepare  
12 tax professionals to take and pass the Internal Revenue Service's Registered Tax Return Preparer  
13 test. Plaintiffs also contend that their accused materials do not infringe any valid ITS copyrights  
14 for various reasons including that the materials ITS alleges it has copyrighted are not original or  
15 copyrightable. Unlike ITS' materials many of Plaintiffs' materials are in Spanish, designed to  
16 instruct tax preparers for whom English is not their first language.

## 17 **3. LEGAL ISSUES**

18 The central legal issues in the *Lopez* suit are whether (1) ITS' claimed materials are  
19 copyrightable; and (2) any of the Plaintiffs infringed any valid copyrights. In the *ITS* suit an  
20 additional legal issue is whether and, if so, to what extent ITS is entitled to damages if any of the  
21 Plaintiffs are found to have infringed ITS' copyrights.

## 22 **4. MOTIONS**

23 The parties may move for summary judgment after discovery.

## 24 **5. AMENDMENT OF PLEADINGS**

25 Lopez' Second Claim for Declaratory Relief re Disparagement has been dismissed  
26 without prejudice [Docket No. 28]. Neither Lopez nor ITS presently anticipates adding or  
27 dismissing any additional claims or parties after the filing of pleadings as contemplated in part 1  
28

1 hereof.

2 **6. EVIDENCE PRESERVATION**

3 The parties have not specifically agreed to evidence preservation but anticipate that any  
4 relevant ESI or other evidence is and will remain preserved. Respective counsel for Lopez and  
5 ITS have cautioned their clients about the need for electronic evidence preservation.

6 **7. DISCLOSURES**

7 Initial disclosures are to be made by each party not later than October 16, 2012. Each  
8 party intends to disclose its non-expert witnesses, documents supporting its case-in-chief, a  
9 calculation of damages and information concerning relevant potentially applicable insurance as  
10 required by Fed. R. Civ. P. 26(a).

11 **8. DISCOVERY**

12 No discovery has been done. Each party anticipates taking the depositions of the other  
13 sides' disclosed percipient witnesses, as well as serving requests for production of documents,  
14 requests for admission and interrogatories. Proposed discovery cutoff dates are set forth in Sec.  
15 17 below.

16 **9. CLASS ACTIONS**

17 This case is not a class action.

18 **10. RELATED CASES**

19 The *Lopez* and *ITS* cases have been deemed related [Docket No. 26] and are now  
20 consolidated. No other related cases or proceedings are pending before another judge of this  
21 Court or before another court or administrative body.

22 **11. RELIEF**

23 Plaintiffs seek a declaratory judgment establishing that they have not infringed any ITS  
24 copyrights.

25 ITS seeks compensation for economic damages from what it contends is the unlicensed and  
26 infringing copying and distribution of copyrighted works, resulting profits to any adjudicated party  
27 infringer, and/or any other damages that may be developed in discovery and presented at trial of this  
28

1 matter.

2 **12. SETTLEMENT AND ADR**

3 The parties have agreed to an Early Neutral Evaluation of this case.

4 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

5 The parties decline to proceed before a Magistrate Judge.

6 **14. OTHER REFERENCES**

7 This case is not suitable for reference to binding arbitration, a special master or the  
8 Judicial Panel on Multidistrict Litigation.

9 **15. NARROWING OF ISSUES**

10 The parties are not presently aware of issues susceptible to narrowing by motion. If as  
11 discovery progresses it appears that the presentation of evidence at trial can be narrowed through  
12 stipulated facts the parties will so advise the Court. Bifurcation of issues, claims or defenses is  
13 not required.

14 **16. EXPEDITED TRIAL PROCEDURE**

15 This case is not suitable for handling under the Expedited Trial Procedure of General  
16 Order 64, Attachment A.

17 **17. SCHEDULING**

18 The parties have agreed to the following deadlines:

19 Non-expert discovery cutoff: June 3, 2013

20 Expert disclosure: July 8, 2013

21 Expert discovery cutoff: August 30, 2013

22 Pretrial conference: October 1, 2013

23 Trial: October 22, 2013

24 **18. TRIAL**

25 As no party has requested a jury, the case shall be tried to the Court. The trial is expected  
26 to last 5 days.

1 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

2 Each party has filed or will file a Disclosure Statement/Certificate of Disinterested  
3 Parties.

4 **20. OTHER**

5 The parties are not aware of other matters that may facilitate the just, speedy and  
6 inexpensive disposition of the matter other than as stated above.

7 Dated: October 17, 2012

**GAUNTLETT & ASSOCIATES**

8 By: /s/ Andrew M. Sussman

9 David A. Gauntlett  
James A. Lowe  
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10  
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12 LOPEZ, KRISTEENA S. LOPEZ, and LATINO  
TAX PROFESSIONALS ASSOCIATION, LLC  
13

14 Dated: October 17, 2012

Nicholas Ranallo

15 By: /s/ Nicholas Ranallo

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23 THE INCOME TAX SCHOOL, INC.

24 The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as  
25 the Case Management Order for this case and all parties shall comply with its provisions.

26 IT IS SO ORDERED.

27 Dated: \_\_\_\_\_

28 \_\_\_\_\_  
UNITED STATES DISTRICT JUDGE